



**REQUEST FOR QUALIFICATIONS FOR
SPECIAL COUNSEL SERVICES FOR
THE NEW JERSEY TRANSIT CORPORATION RETIREMENT
PLANS AND THE NEW JERSEY TRANSIT CORPORATION
HEALTH AND WELFARE PLANS, AND FEDERAL TAX AND
OTHER APPLICABLE FEDERAL LAW**

Issued by the
State of New Jersey
Department of Law & Public Safety

Date Issued:
Tuesday, May 14, 2013

Question and Answer Cut-off Date:
Wednesday, May 22, 2013

Proposals Due:
5:00 P.M. June 5, 2013

Jeffrey S. Chiesa
Attorney General

Christopher S. Porrino
Director, Division of Law

State of New Jersey
Department of Law and Public Safety
Richard J. Hughes Justice Complex
25 Market St.
Trenton, NJ 08625

**REQUEST FOR QUALIFICATIONS
FOR SPECIAL COUNSEL SERVICES FOR THE NEW JERSEY TRANSIT
CORPORATION RETIREMENT PLANS AND THE NEW JERSEY TRANSIT HEALTH
AND WELFARE PLANS, AND FEDERAL TAX AND OTHER APPLICABLE
FEDERAL LAW**

1.0 PURPOSE AND INTENT

- 1.1 The Attorney General of New Jersey, through the Department of Law and Public Safety, Division of Law (the "Attorney General") serves as the legal representative and counsel for the departments, boards, offices, commissions and other instrumentalities of State government, its officers and employees. Thus, the Attorney General represents New Jersey Transit Corporation ("NJ Transit" or "NJT") in its legal affairs, including, but not limited to, NJ Transit's legal issues concerning the agency's various retirement systems and pension plans (the "Pension Plans"), and its health and welfare plans (the "Health and Welfare Plans") (collectively, the "Plans"). The Pension Plans are administered by NJ Transit's Pensions Department ("NJT Pensions"). In general, the Health and Welfare Plans are administered by NJ Transit's Employee Benefits Department ("NJT Benefits") along with the following third party administrators: Horizon Blue Cross Blue Shield of New Jersey ("BCBSNJ") (for medical and dental plans), Express Scripts (for the prescription drug plan), VSP (for vision care), and Aetna (for supplemental sick payments). However, the life insurance and the long term disability insurance portions of the Health and Welfare Plans are insured and administered by Prudential Life Insurance and The Hartford, respectively. NJ Transit's enabling legislation authorizes the corporation to adopt and maintain benefit plans for its employees, and it provides that such plans may include, among other things, pension plans, medical disability plans and any other appropriate means of providing stipulated benefits - whether new or a continuation of plans previously established by entities acquired by the corporation. The Plans have been established and maintained pursuant to the enabling legislation, and the Plans must comply with the provisions of the Internal Revenue Code, as may be amended and supplemented from time to time (the "Code"). The Attorney General issues this Request for Qualifications ("RFQ") intending to select Special Counsel for the services described in Section 4.
- 1.2 Proposals are being sought by the Attorney General for the appointment of Special Counsel to NJ Transit in connection with providing advice on the Plans, regarding such things as the compliance of the Plans with the Code and other applicable federal law. You are invited to submit a proposal for appointment as Special Counsel for this assignment.

- 1.3 The Attorney General will select two or more firms to serve as Special Counsel for a term of three (3) years.
- 1.4 The firms selected as Special Counsel must comply with all local, State and federal laws rules and regulations applicable to the engagement and to the services to be performed thereunder.
- 1.5 Compensation for the firms selected as Special Counsel shall be negotiated based upon the provisions set forth in Section 5.0 below.
- 1.6 The Attorney General will designate one or more attorneys from the Division of Law in the Department of Law and Public Safety who will be the sole point(s) of contact for all matters pertaining to this engagement and who will oversee and coordinate the activities of Special Counsel.

2.0 MINIMUM QUALIFICATIONS

AT A MINIMUM, RESPONDING FIRMS MUST HAVE THE FOLLOWING QUALIFICATIONS:

EXPERTISE IN FEDERAL TAX LAW GOVERNING PUBLIC RETIREMENT PLANS AND HEALTH CARE PLANS, INCLUDING CODE SECTION 125 PLANS

EXPERTISE IN OTHER FEDERAL LAW APPLICABLE TO PUBLIC RETIREMENT PLANS AND HEALTH CARE PLANS, INCLUDING CODE SECTION 125 PLANS.

Failure by a firm to meet these minimum qualifications will result in the proposal's immediate rejection.

3.0 BACKGROUND

NJ Transit's powers include adopting and maintaining employee benefit plans for employees of the corporation, including, but not limited to, a pension and deferred compensation program and a health care benefits program. Under its pension and deferred compensation program NJ Transit operates seven (7) defined contribution plans, viz., the Pension Plans. They are: The New Jersey Transit Non-Agreement Money Purchase Plan; The New Jersey Transit Corporation Policemen's Benevolent Association Local 304 Money Purchase Plan; The New Jersey Transit Corporation Rail Operations Money Purchase Pension Plan (a/k/a the "Rail 401(a) Plan"); The New Jersey Transit Employees Savings/Deferred Compensation Plan; The New Jersey Transit Bus Union Deferred Compensation Plan; The New Jersey Transit Non-Agreement 457 Deferred Compensation Plan; and The New Jersey Transit Employee Savings/Deferred Compensation Plan. NJT Pensions administers each of the Pension Plans, and the first four listed Pension Plans are IRS "qualified" plans. NJ Transit's Health and Welfare Plans (a/k/a as the NJT Group Insurance Programs) include a medical plan, a dental plan, a vision care plan, a supplemental sick benefits plan, a prescription drug plan, a group life insurance plan, and a long

term disability insurance plan. Although certain plans within the Health and Welfare Plans are administered by various third party administrators, and although the group life insurance and the long term disability insurance elements of the Health and Welfare Plans are administered by private insurers, the Health and Welfare Plans are overseen by NJ Transit's NJT Benefits

4.0 SCOPE OF SERVICES

Special Counsel will be expected to provide advice to the Plans in areas as requested regarding compliance of the Plans with the Code and other applicable federal law, and regarding consequences related to any proposed administrative, regulatory and/or legislative changes, modifications and additions to the Plans. Such services may include, but not be limited to:

- 4.1 Reviewing the following for compliance with the Code and all other applicable federal laws, rules and regulations, and providing recommended Plan changes when needed:
 - Proposed State legislation
 - Enacted State legislation
 - Plan documents, including Plan amendments and restatements
 - Proposed regulations and comments to proposed regulations
 - Selected print materials distributed to participants in the Plans
 - Assist in developing a checklist for staff to follow when processing
Qualified Domestic Relations Orders
 - Federal tax reporting
- 4.2 Preparing and issuing legal opinions to the effect that the Plans are in compliance with the Code and all other applicable federal laws and regulations.
- 4.3 Providing advice regarding changes required to be made in administrative processes as a result of changes in State and federal law.
- 4.4 Providing advice concerning the design of new retirement plans, new health care plans, and other employee benefit plans.
- 4.5 Providing training for NJT Pensions staff, NJT Benefits staff, NJ Transit Board of Directors members, and NJ Transit's executive staff regarding fiduciary responsibilities pertaining to the Plans.
- 4.6 Alerting NJT Pensions staff and NJT Benefits staff of new developments, concerns and issues that may affect any Plan's compliance with federal law, including the Code.
- 4.7 Being directly available to NJT Pensions management, NJT Benefits management and NJ Transit executive staff - at their request - to review and discuss pertinent critical matters.
- 4.8 At the request of NJT Pensions and /or NJT Benefits, seeking determinations from the Internal Revenue Service and other applicable federal agencies as to the compliance of the Plans with federal laws and regulations.
- 4.9 Responding and replying to other NJT Pensions and /or NJT Benefits requests on an ad hoc basis as required.

- 4.10 Providing advice on how to interpret proposed and enacted federal and State legislation when such legislation applies to or affects any of the NJ Transit Plans, including, but not limited to Code Section 125 plans.
- 4.11 Providing advice on how to interpret proposed and enacted federal and State legislation, and how to comply with enacted federal and State legislation, when such legislation pertains to the federal Patient Protection and Affordable Care Act.

5.0 REQUIRED COMPONENTS OF THE RFQ PROPOSAL

Proposals must respond to each of the following requests in the order indicated. Please provide the information requested below for all counsel who may perform any of the requested services. Please do not place the responses on separate pieces of paper, and please provide the information that is requested below for all counsel who may perform any of the requested services.

5.1 Firm Profile and Experience

- A. Indicate the date your firm was established.
- B. Describe the legal services provided by your firm.
- C. Describe your firm's specialty and/or area(s) of expertise.
- D. Identify the number of employees in your firm (licensed attorneys; legal support staff; other support staff).
- E. Indicate whether you are a small firm. For the purposes of this RFQ, a small firm has less than ten full or part-time attorneys.
- F. Describe the participation of women and minorities in your firm. Please note the number of women partners and associates and minority partners and associates and indicate the percentage of your firm that is owned by women and by minorities.
- G. Describe any special training or experience members of your firm possess that may assist in providing the requested legal services.
- H. Provide a description of your firm's presence in New Jersey. Note the location of each office, the number of attorneys resident in each office, whether they are partners or associates and whether attorneys not licensed in the State of New Jersey will be assigned to provide any of the requested legal services if your firm is engaged as Special Counsel pursuant to this RFQ.
- I. Identify any State agencies or departments before or against which the firm has regularly appeared on behalf of other clients. Please note that the State, as a public entity, is precluded by the Rules of Professional Conduct from waiving conflicts of interest, see RPC 1.7(a)(2) and RPC 1.7(b)(2). In evaluating the possibility of conflicts of interest, counsel are directed to review the August 2,

1984 Opinion Letter of Attorney General Irwin I. Kimmelman (attached) and the Division of Law's Outside Guidelines that are referred to in Section 9.1 hereof. If your firm is designated as Special Counsel, you have a continuing obligation to disclose to the Attorney General of New Jersey any actual or potential conflicts. Additionally, retained counsel must agree not to undertake any future representation that might result in the disclosure of the State's work product to potential or actual adversaries of the State.

- J. Identify any governmental entities, agencies, or political subdivisions, other than the State of New Jersey, that the firm represents or has represented. Include the time period during which the firm represented each such agency and the nature of the work performed.
- K. Describe the firm's approach to maintaining responsive communication with the Division of Law and keeping the State informed of problems and progress.
- L. Provide a representative listing of the firm's major private sector clients.
- M. Provide the name, address, telephone number, e-mail address, and facsimile number for the contact person in your firm.

5.2 Qualifications and Experience

- A. List all attorneys in your firm that have at least five years' experience pertaining to federal tax and other applicable federal law governing employee benefit plans including governmental employee benefit plans.
- B. Describe your firm's experience pertaining to federal tax and other applicable federal law governing the Plans. Specify how your firm's experience meets the Minimum Qualifications set forth in Section 2.0.
- C. State the qualifications and experience of the particular attorneys proposed to staff the work. For each member of your firm that would be involved in handling the matter as Special Counsel on behalf of the State, provide a detailed resume including information as to:
 - (i) Education, including advanced degrees;
 - (ii) Years and jurisdictions of admission to practice;
 - (iii) Number of years engaged in practice in the designated practice area;
 - (iv) General work experience;
 - (v) Any professional distinctions (e.g., certifications, teaching experience);
 - (vi) Office location of the attorney.

- D. As to the members of your firm who would be involved in handling the representation as Special Counsel, describe the role each would play in the representation and the approximate percentage of the work that each would perform. Percentages for junior lawyers may be listed separately or in the aggregate.

5.3 Other Qualification Information

- A. Identify all adverse determinations against your firm or any of its partners, associates or employees or persons acting on its behalf, with respect to actions, proceedings, claims or complaints of any kind under any local, State or Federal laws, regulations, court rules, or Rules of Professional Conduct.
- B. Identify and describe in detail any indictments, convictions or civil offenses arising directly or indirectly from the conduct of business by your firm or any of its partners, associates, employees, or agents.
- C. Identify any material arrangements, relationships, associations, employment or other contacts that may cause a conflict of interest or the appearance of a conflict of interest if your firm acts as Special Counsel for this engagement.
- D. Confirm your firm's malpractice insurance limits.
- E. Confirm that your firm covers litigation costs, any bonds required by a court, and any potential liability under Fed.R.Civ.P. 11.
- F. Confirm that your firm agrees to abide by the attached Standards for Submittal and Review of Special Counsel Invoices.
- G. Confirm that upon selection as Special Counsel your firm will provide all vender certifications required by Public Law 2005, Chapters 51 and 271.

5.4 Fees

The firm should submit a blended hourly rate applicable to (i) all attorneys, and (ii) all other persons, including law clerks and paralegals, including the percentage discount the proposed hourly fee represents from your customary hourly fee for similar work. Special Counsel hourly fees do not include reimbursables, such as computer time, postage, telephone charges, travel, duplicating, etc. Reasonable expenses will be reimbursed to your firm in accordance with the Division of Law's Outside Counsel Guidelines. Please see a copy of those Guidelines attached to this RFQ. If the fee proposals submitted by all qualified responders are in excess of those deemed reasonable by the Attorney General, a lower fee may be negotiated.

5.5 Additional Information

- A. A copy of a valid New Jersey Business Registration must be submitted by the selected firm. If not already registered with the New Jersey Division of Revenue,

registration can be completed online at the Division of Revenue website: <http://www.state.nj.us/treasury/revenue/index.html>.

B. Pursuant to Public Law 2005, Chapter 51 ("Chapter 51") State departments, agencies and authorities are precluded from awarding contracts exceeding \$17,500 to vendors who make certain political contributions on and after October 15, 2004, to avoid any appearance that the selection of State contractors is based on the contractors' political contributions. Chapter 51 also requires the disclosure of all contributions to any political organization organized under 26 U.S.C. 527 that also meet the definition of a continuing political committee within the meaning of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7. The firm shall submit the required certification form(s) and disclosure form(s) (referred to in Exhibit A, II attached) with its proposals. Failure to submit such forms and/or failure of such forms to evidence compliance with Chapter 51 shall be cause for rejection of the firm's proposal. Any firm selected as Special Counsel shall maintain compliance with Chapter 51, during the term of its engagement as Special Counsel.

C. Pursuant to Public Law 2005, Chapter 271 ("Chapter 271") your firm is required to disclose its (and its principals') political contributions within the immediately preceding twelve (12) month period. No prospective firm will be precluded from serving as Special Counsel by virtue of the information provided in the Chapter 271 disclosure provided the form is fully and accurately completed. Prior to formal appointment, the firm anticipated to be selected as Special Counsel will be required to submit Chapter 271 disclosures.

Please also be advised of your responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.13 (P.L. 2005, c. 271, section 3) if your firm receives contracts in excess of \$50,000 from a public entity during a calendar year. It is your firm's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financing penalties by ELEC. Additional information about this requirement is available from ELEC at (888) 313-3532 or www.elec.state.nj.us.

D. In accordance with Public Law 2005, Chapter 92, all services performed pursuant to this engagement shall be performed within the United States of America.

E. Pursuant to Public Law 1995, chapter 159, effective January 1, 1998 and notwithstanding the provision of any other law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off so much of that payment as shall be necessary to satisfy the indebtedness. The amount set-off shall not allow for the deduction of any expense or other deduction which might be attributable to the taxpayer, partner, or shareholder subject to set-off under this Act.

The Director of the Division of Taxation shall give notice of the set-off to the taxpayer, partner or shareholder and provide an opportunity for a hearing within thirty (30) days of such notice under the procedures for protests established under N.J.S.A. 54:49-19. No request for conference, protest, or subsequent appeal to the Tax Court from any protest shall stay the collection of the indebtedness.

- F. Complete the cover sheet attached as Exhibit B with the name, address of your firm, contact information for this proposal and the number of attorneys in your firm. The number of attorneys in your firm shall be used to determine if your firm is a large or small law firm for purposes of developing lists of large and small firms to be designated as Special Counsel in order to further the State's interests in promoting small businesses and facilitate the handling of matters for the State.

6.0 PROPOSAL SUBMISSION

6.1 A sealed original and six (6) sealed copies of the proposal must be marked "Special Counsel RFQ for the New Jersey Transit Corporation Retirement and Health Care Programs and Federal Tax and Other Applicable Federal Law" and delivered no later than 5:00 p.m. on Wednesday, June 5, 2013 to the following:

Susan Fischer (2 copies)
Assistant Attorney General
Division of Law
P.O. Box 112
R.J. Hughes Justice Complex
First Floor - West Wing
Trenton, New Jersey 08625-0112

Alvin Ricardo Little (2 copies)
Assistant Attorney General
Division of Law
124 Halsey Street
5th Floor
Newark, New Jersey 07101

Wayne Solomon, Director (1 copy)
NJ TRANSIT Pension Department
180 Boyden Avenue
Maplewood, New Jersey 07040

Mark Bsales, Director (1 copy)
NJ TRANSIT Department of Benefits
180 Boyden Avenue
Maplewood, New Jersey 07040

Proposals may not be delivered by fax or e-mail.

- 6.2 The Division of Law will accept questions pertaining to this RFQ from all potential bidders electronically. Questions shall be directed to Leslie M. Gore, AAG, at the following email address:

RFQ.QUESTIONS@DOL.LPS.STATE.NJ.US

Please note that the "subject" line of your e-mail must specifically reference this RFQ as follows: "RFQ for New Jersey Transit Corporation Retirement Plans and New Jersey Transit Corporation Health and Welfare Plans, and Federal Tax and Other Applicable Federal Law."

Questions will be accepted until **5:00 p.m. on Wednesday, May 22, 2013.**

- 6.3 In the event the Attorney General determines that additional clarification to this RFQ or additional information is necessary, the Attorney General reserves the right to hold a conference call with eligible firms for the purpose of obtaining the same.
- 6.4 In the event that it becomes necessary to clarify or revise this RFQ, such clarification or revision will be by addendum. Any addendum to this RFQ will become part of this RFQ and part of any designation of a firm as Special Counsel as a result of this RFQ.

ALL RFQ ADDENDA WILL BE POSTED ON THE DEPARTMENT OF LAW AND PUBLIC SAFETY'S WEBSITE.

It is the sole responsibility of the bidder to be knowledgeable of all addenda related to this RFQ.

- 6.5 The Attorney General reserves the right to interview the most qualified firms responding to this RFQ prior to making a final selection.
- 6.6 The Attorney General reserves the right to reject any and all proposals received in response to this RFQ, when determined to be in the State's best interest, and to waive minor noncompliance in a proposal. The Attorney General further reserves the right to make such investigations as she deems necessary as to the qualifications of any and all firms submitting proposals in response to this RFQ. In the event that all proposals are rejected or if the Attorney General, at any time, deems the number of qualified firms submitting proposals to this RFQ to be insufficient, the Attorney General reserves the right to re-solicit proposals.
- 6.7 All documents and information submitted in response to this RFQ generally shall be made available to the general public as required by applicable law.
- 6.8 The State will not be responsible for any expenses in the preparation and/or presentation of the proposals and oral interviews, if any, or for the disclosure of any information or material received in connection with the solicitation, whether by negligence or otherwise.

7.0 SELECTION PROCESS, FEE NEGOTIATIONS, DESIGNATION AND APPROVAL , AND NOTIFICATION

- 7.1 All proposals will be reviewed to determine responsiveness. The Attorney General may reject non-responsive proposals without evaluation, but may waive minor non-compliance. An Evaluation Committee will evaluate responsive proposals. The Evaluation Committee will have a minimum of three (3) members, and may include one or more representatives of the Division. The following evaluation criteria and categories, separate or combined in some manner, and not necessarily listed in order of significance, will be used to evaluate proposals received in response to this RFQ:
- Knowledge and experience of named attorneys in Federal tax law and other federal law applicable to the Plans;
 - Experience of the firm in Federal tax law and other federal law applicable to the Plans;
 - Resources of the firm;
 - Approach to communication with the Department of Law;
 - Past experience of the State with the firm and/or named attorneys; and
 - Fees
- 7.2 Proposals will be ranked based on the above criteria. Special Counsel will be selected by the Attorney General after consultation with the Division. The Attorney General reserves the right to reject any and all responses to the RFQ; waive any requirements or minor informalities; modify or amend, with the consent of the submitting firms, any statement; and to affect any agreement deemed by the Attorney General to be in his best interest or in the best interests of the State.
- 7.3 The Attorney General reserves the right, in his sole discretion to require interviews or oral presentations from the most qualified firms that submitted proposals, prior to the Attorney General making a final determination.
- 7.4 The Attorney General or the Division may contact one or more firms to negotiate the billing rates for the term of the Special Counsel designation, or may request one or more best and final offers from one or more firms. In such an event, the rate negotiated and agreed upon or contained in the best and final offer shall be fixed for the term of the Special Counsel designation.
- 7.5 The recommendation(s) are submitted to the Attorney General for his determination, in his discretion, as to which firm(s), if any, shall be designated as Special Counsel and his designations must be approved by the Governor, in his discretion.
- 7.6 The Division shall notify in writing any firm that is selected of its selection as Special Counsel and the firms designated as Special Counsel shall be posted on the Division's website at: <http://www.nj.gov/oag/law/outside-counsel.htm>

8.0 ADDITIONAL TERMS

- 8.1 No endorsement: Designation as Special Counsel does not constitute an endorsement by the State of New Jersey, the Attorney General or the Department of Law and Public Safety.
- 8.2 Effect of selection of a firm as Special Counsel will not bind or otherwise obligate the State of New Jersey to retain the firm for legal services. Selection of a firm as Special Counsel will not guarantee any other form of employment or engagement.
- 8.3 Attorney General authority not constrained: Nothing in this RFQ is intended to limit or constrain the discretion of the Attorney General in exercising any authority, duty, prerogative or power that is established or recognized by the Constitution, statutes, Executive Orders, regulations, or case law.

9.0 OUTSIDE COUNSEL DESIGNATIONS AND RETAINER AGREEMENTS

A firm selected pursuant to this RFQ for designation as Special Counsel, with the approval of the Attorney General and the Governor, will be the subject of a special counsel designation, pursuant to N.J.S.A. 52:17A-13.

9.1 Outside Counsel

Counsel designated as Special Counsel and retained on any specific matter must comply with the Outside Counsel Guidelines ("Guidelines") available for review at: http://www.nj.gov/oag/law/pdf/rfqs/oag-dol-Outside-Counsel-Guidelines-v4_012111_MBW.pdf. The Guidelines may be updated from time to time. Such updates will be available at the same link. If your firm is designated as Special Counsel, by submitting a proposal, you agree that whenever your firm is retained, it shall abide by the Guidelines as written, as well as with any updates that may be made during the term.

9.2 Conflict of Interest

Section III of the Guidelines requires that counsel be free of any conflict of interest. Please note that the State, as a public entity, is precluded by the Rules of Professional Conduct from waiving conflicts of interest. See RPC 1.7(a)(2) and RPC 1.7(b)(2). If your firm is designated as Special Counsel, you have a continuing obligation during the term to disclose to the Attorney General of New Jersey any actual or potential conflicts. Additionally, retained counsel shall not disclose any confidential information learned or received in any way as part of a retention, either during the retention or at any time after the retention has concluded.

9.3 ELECTRONIC BILLING

Special Counsel retained for a specific matter(s) shall be required to electronically bill the Division for their services in accordance with the Guidelines.

9.4 COSTS

Special Counsel shall have resources sufficient to advance all costs, including the costs of any necessary experts. Billing for costs shall be done in accordance with the Guidelines.

10.0 EVALUATIONS

No less frequently than every six months, the Attorney General or designee shall evaluate the firm's performance. The evaluation will focus on responsiveness; quality of work; adequacy and appropriate utilization of resources; adherence to invoice submittal standards; and cost effectiveness. The Attorney General or designee will advise each firm of any problem areas. If, as result of one or more evaluations, the Attorney General determines, in his sole discretion, that a firm should be removed from designation as Special Counsel, the firm may be removed after written notice is provided to the firm. Other than this written notice, nothing in this RFQ creates any rights, entitlements, privileges, or presumptions in favor of a law firm that would constrain the Attorney General's authority to remove a firm from designation as Special Counsel.

10.1 ATTACHMENTS

Attachments to this RFQ are:

Exhibit A - Additional Terms
Exhibit B - Cover Sheet
Exhibit C - Kimmelman Letter

Exhibit A
Additional Requirements for all
Office of Attorney General, Division of Law Retention Agreements

A. Ownership Disclosure

The Ownership Disclosure addresses the requirements of N.J.S.A. 52:25-24.2. An ownership disclosure must be completed and submitted with each signed retainer agreement. The Retention Agreement cannot be countersigned unless and until the Ownership Disclosure is properly completed and accepted. The form is available at:

<http://www.state.nj.us/treasury/purchase/forms/StandardRFPForms.pdf>

B. Affirmative Action Supplement with Affirmative Action Employee Information Report

Affirmative Action Supplement with Affirmative Action Employee Information Report address the requirements of the Law Against Discrimination, N.J.S.A. 10:5-31 to -34 and the regulations N.J.A.C. 17:27.3.1 et seq. The form must be completed and submitted either with the proposal or with the signed Retention Agreement. The retainer is not completed unless and until either the form is properly completed and accepted or Special Counsel presents a copy of a Division of Public Contracts EEO Compliance Certificate of Employee Information Report pursuant to N.J.A.C. 17:27.4.6. The form is available at:

http://www.state.nj.us/treasury/purchase/forms/AA_%20Supplement.pdf

Information about obtaining the Certificate, renewing the Certificate or obtaining a duplicate Certificate is available from the Division of Public Contracts EEO Compliance:

http://www.state.nj.us/treasury/contract_compliance/index.shtml

The specific language of N.J.A.C. 17:27-3.5 and 17:27-3.8, contains specific requirements for Special Counsel Retention Agreements and is hereby incorporated as if set forth at length herein.

C. New Jersey State W-9 and Vendor Questionnaire

No Special Counsel shall be paid by the State unless Special Counsel has properly completed New Jersey State W-9 and Vendor Questionnaire on file with the State. If Special Counsel does not have a New Jersey State W-9 and Vendor Questionnaire on file with the State, the properly completed W9 shall be returned with the Retention Agreement signed by Special Counsel. A copy may be obtained from the Designated Attorney at the Division of Law.

D. New Jersey Business Registration

Pursuant to N.J.S.A. 52:32-44 (b), Special Counsel must have a valid New Jersey Business Registration prior to entering the Retention Agreement. If Special Counsel is not already registered or does not know if its firm is already registered, with the New Jersey Division of Revenue, registration can be completed or verified online at the Division of Revenue website:

<http://www.state.nj.us/treasury/revenue/busregcert.shtml>

As part of its Special Counsel proposal in response to an RFQ, or, if not done then, the first time Special Counsel is retained, Special Counsel must submit a copy of Special Counsel's Business Registration. Special Counsel is responsible for keeping its Business Registration current.

E. Requirements of Chapter 51 and Executive Order 117 (Also referred to as "Pay to Play Restrictions", N.J.S.A. 19:44A-20.13 to -20.25, or Executive Order 134)

In order to safeguard the integrity of State government procurement by imposing restrictions to insulate the negotiation and award of State contracts, including Retention Agreements, from political contributions that pose the risk or appearance of the risk of improper influence, purchase of access, or the appearance thereof, the Legislature enacted P.L. 2005, c.51 (codified at N.J.S.A. 19:44A-20.13 - 20.25) (Chapter 51), on March 22, 2005, effective retroactive to October 15, 2004, superseding the terms of Executive Order 134. In addition, on September 24, 2008, Executive Order 117 (Corzine) was issued and made effective on November 15, 2008 (EO 117) which sets forth additional limitations on the ability of executive branch agencies to contract with vendors who have made or solicited certain contributions. Pursuant to the requirements of Chapter 51 and EO 117, the terms and conditions set forth in this section are material terms of any Retention Agreement entered into with Special Counsel:

I. Definitions

For the purpose of this section, the following shall be defined as follows:

a) Contribution means a contribution reportable as a recipient under The New Jersey Campaign Contributions and Expenditures Reporting Act., P.L. 1973, c.83 (N.J.S.A. 19:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-7, -10.1 et seq. Contributions in excess of \$300 during a reporting period are deemed "reportable" under these laws and regulations.

b) Business Entity means any natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of New Jersey or any other state or foreign jurisdiction. The definition of a business entity includes:

(i) all principals who own or control more than 10 percent of the profits or assets of a business entity or 10 percent of the stock in the case of a business entity that is a corporation for profit, as appropriate and for a for profit entity, the following:

(1) in the case of a corporation: the corporation, any officer of the corporation, and any person or business entity that owns or controls 10% or more of the stock of the corporation;

(2) in the case of a general partnership: the partnership and any partner;

(3) in the case of a limited partnership: the limited partnership and any partner;

(4) in the case of a professional corporation: the professional corporation and any shareholder or officer;

(5) in the case of a limited liability company: the limited liability company and any member;

(6) in the case of a limited liability partnership: the limited liability partnership and any partner;

(7) in the case of a sole proprietorship: the proprietor; and

(8) in the case of any other form of entity organized under the laws of this State or any other state or foreign jurisdiction: the entity and any principal, officer, or partner thereof;

(ii) any subsidiaries directly or indirectly controlled by the business entity;

(iii) any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and

(iv) if a business entity is a natural person, that person's spouse or civil union partner, or child residing in the same household provided, however, that, unless a contribution made by such spouse, civil union partner, or child is to a candidate for whom the contributor is entitled to vote or to a political party committee within whose jurisdiction the contributor resides such contribution is in violation of section 9 of Chapter 51.

II. Certification and disclosure requirements

(a) The State shall not entertain a proposal from Special Counsel or enter into a contract to procure from any Special Counsel services or any material, supplies or equipment, or to acquire, sell or lease any land or building, which includes the entry of Retention Agreements with Special Counsel, where the value of the transaction exceeds \$17,500, if that Special Counsel's Business Entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions to a candidate committee and/or election fund of any candidate for or holder of the public office of Governor or Lieutenant Governor, or to any State, county political party, or to a legislative leadership or municipal political party committee during certain specified time periods.

(b) Upon submitting a proposal to be Special Counsel, and again, prior to entering into any Retention Agreement, the Special Counsel shall either:

(i) complete and submit to the Designated Attorney the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form, certifying that no contributions prohibited by Chapter 51 have been solicited or made by the Business Entity and reporting all contributions the Business Entity made during the preceding four years to any political organization organized under 26 U.S.C. §527 of the Internal Revenue Code that also meets the definition of a "continuing political committee" within the meaning of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7. The form is available on the New Jersey Division of Purchase and Property website at:

http://www.state.nj.us/treasury/purchase/forms/eo134/c51_eo117_cd_02_10_09.pdf

The instructions, for the form are available on the Division of Purchase and Property website at:

http://www.state.nj.us/treasury/purchase/forms/eo134/c51_eo117_cd_instr%2002_2009.pdf

or

(ii) submit a copy of Special Counsel's still valid Two-Year Chapter 51/Executive Order 117 Vendor Certification.

(c) Special Counsel is required, on a continuing basis, to report any contributions and solicitations Special Counsel makes during the term of the Retention Agreement, and any extension(s) thereof, at the time any such contribution or solicitation is made.

(d) Special Counsel's failure to submit the required forms will preclude the Division of Law's execution of the Retention Agreement with Special Counsel.

(e) The State Treasurer's designee shall review the Certification and Disclosures submitted by the Special Counsel pursuant to this section, as well as any other pertinent information concerning the contributions or reports thereof by the intended Special Counsel, prior to award, or during the term of the Retention Agreement. If the State Treasurer determines that any contribution or action by the Special Counsel violated Chapter 51 or EO 117, the State Treasurer shall disqualify Special Counsel from receipt of a Retention Agreement for the time period required by the statute and executive order. If the State Treasurer or his designee determines that any contribution or action constitutes a breach of contract that poses a conflict of interest pursuant to Chapter 51 or EO 117, the State Treasurer shall disqualify Special Counsel from receipt of a Retention Agreement.

III. Breach of Terms of Chapter 51 or EO 117 is a Breach of Retention Agreement

It shall be a breach of the terms of the Retention Agreement for the Special Counsel (and all those attributed to Special Counsel's business entity) to do any of the following:

- (a) make or solicit a contribution in violation of Chapter 51 or EO 117;
- (b) knowingly conceal or misrepresent a contribution given or received;
- (c) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
- (d) make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or of Lieutenant Governor, or to any State, county or municipal party committee, or any legislative leadership committee;
- (e) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of Chapter 51 or EO 117;
- (f) fund contributions made by third parties, including consultants, attorneys, family members, and employees;
- (g) engage in any exchange of contributions to circumvent the intent of Chapter 51 or EO 117; or
- (h) directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of Chapter 51 or EO 117.

F. Additional Disclosure Requirement of P.L. 2005, c. 271

Pursuant to P.L. 2005, c.271 (Chapter 271), every Special Counsel is required to disclose its (and its principals') political contributions within the immediately preceding twelve (12) month period to proposal submission or execution of a Retention Agreement. No Special Counsel will be precluded from being retained by virtue of the information provided in the Chapter 271 disclosure, provided the form is fully and accurately completed in connection with the execution of any Retention Agreement. The firm anticipated to be selected as Special Counsel for that matter will be required to submit Chapter 271 disclosures in connection with the execution of any Retention Agreement.. The form is available at:

<http://www.state.nj.us/treasury/purchase/forms/CertandDisc2706.pdf>

Please also be advised of the responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.13 (P.L. 2005, c. 271, section 3) if Special Counsel receives in excess of \$50,000 from contracts from one or

more public entities during a calendar year. It is Special Counsel's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at (888) 313-3532 or <http://www.elec.state.nj.us>.

G. Notice of Set-off for State Taxes

Pursuant to P.L. 1995, c159, effective January 1, 1996, (codified at N.J.S.A. 54:49-19 et seq.), and notwithstanding the provision of any other law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off so much of that payment as shall be necessary to satisfy the indebtedness. The amount set-off shall not allow for the deduction of any expense or other deduction which might be attributable to the taxpayer, partner, or shareholder subject to set-off under this Act.

The Director of the Division of Taxation shall give notice of the set-off to the taxpayer, partner or shareholder and provide an opportunity for a hearing within thirty (30) days of such notice under the procedures for protests established under N.J.S.A. 54:49-19. No request for conference, protest, or subsequent appeal to the Tax Court from any protest shall stay the collection of the indebtedness.

H. Notice of New Jersey Conflict of Interest Law

The New Jersey Conflict of Interest Law, N.J.S.A. 52:13D-12 et seq. and Executive Order 189 (Kean), prohibit certain actions by persons or entities which provide goods or services to any State Agency. Specifically:

- I. No Special Counsel shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13(b) and (e), in the Department of the Treasury or any other agency with which such Special Counsel transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13(i), of any such officer or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13(g).
- II. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any Special Counsel shall be reported in writing forthwith by Special Counsel to the Attorney General and the State Ethics Commission.
- III. No Special Counsel may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such Special Counsel to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13(g). Any relationships State Ethics Commission, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

- IV. No Special Counsel shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
- V. No Special Counsel shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the Special Counsel or any other person.
- VI The provisions cited above in paragraph H(I) - H(V) shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with Special Counsel under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the State Ethics Commission may promulgate.

I. Source Disclosure Certification

Execution of the Retention Agreement confirms that Special Counsel agrees, in accordance with Executive Order 129 (McGreevey) and N.J.S.A. 52:34-13.2 (P.L. 2005, c. 92), that all services performed for the Retention Agreement shall be performed within the United States. In the event that all services performed for the Retention Agreement shall NOT be performed within the United States, Special Counsel shall send the Designated Attorney a letter that states with specificity the reasons why the services cannot be so performed. The letter shall require review and approval pursuant to N.J.S.A. 52:34-14.2 prior to execution of this Retention Agreement.

J. Certification of Non-Involvement in Prohibited Activities in Iran

Pursuant to N.J.S.A. 52:32-58, Special Counsel must certify that neither Special Counsel, nor one of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If Special Counsel is unable to so certify, Special Counsel shall provide a detailed and precise description of such activities. The form is available at:

<http://www.state.nj.us/treasury/purchase/forms/StandardRFPForms.pdf>



EXHIBIT B

COVERSHEET, AGREEMENT AND CERTIFICATION FOR
STATE OF NEW JERSEY DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF LAW
PROPOSAL FOR SPECIAL COUNSEL DESIGNATION

Name and Issue Date of Special Counsel RFQ to which you are responding:

Firm Name: _____

Firm Address: _____

Number of Attorneys in the Firm: _____

Attorney to Contact for this Proposal: _____

Telephone Number of Contact for this Proposal: _____

Email Address of Contact for this Proposal: _____

AGREEMENT AND CERTIFICATION

By submitting this proposal, I agree, on behalf of my firm, that my firm will abide by the Outside Counsel Guidelines available at: <http://www.nj.gov/oag/law/rfqs.htm> and with any updates thereto during the term of a Special Counsel Designation and in the event that my firm is retained by the Division of Law.

By submitting this proposal, I understand that in the event that my firm is selected and receives a Special Counsel Designation, the Special Counsel Designation is not a guarantee that my firm will be retained for any matter.

By submitting this proposal, I agree that in the event that my firm receives a Special Counsel Designation and is retained, my firm shall bill at the rates [set forth in the RFQ/set forth in the Special Counsel Designation], and that the rates shall not increase during the term of the Special Counsel Designation.

The information in this proposal is true and accurate has been reviewed by me and is true and accurate to the best of my knowledge.

By submitting this proposal, I warrant that I have the authority to bind my firm to the Proposal submitted and to any retention my firm may receive as a result.

Signature of Contact Attorney

Date

Exhibit C



IRWIN I. KIMMELMAN
ATTORNEY GENERAL

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
RICHARD J. HUGHES JUSTICE COMPLEX
CN 080
TRENTON, N.J. 08625
609 292-4919

August 2, 1984

To: Heads of All Executive Departments

Re: Special Counsel

Dear Members of the Cabinet:

It has come to our attention that special counsel appointed to some State agencies have represented private parties in matters before, or in transactions involving, the agencies to which they are appointed. In addition, some special counsel have taken an adversarial position on behalf of private clients in matters involving the agency. For the following reasons, you are advised that special counsel appointed to your agency may not appear on behalf of private parties before your agency or take adversarial positions against the agency on behalf of those clients.

The Disciplinary Rules adopted by the Supreme Court provide that "A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment." DR 5-105(A). The Rules of Professional Conduct which replace the Disciplinary Rules effective September 10, 1984 similarly provide that "A lawyer shall not represent a client if representation of the client will be directly adverse to another client" or "if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests...." RPC 1.7(a) and (b). The ethical restrictions applicable to a particular lawyer under these provisions extend to the other lawyers of any firm with which the attorney is associated. DR 5-105(C); RPC 1.10(a).

The Supreme Court and its Advisory Committee on Professional Ethics have held that these principles bar the appearance on behalf of one client in a matter involving another client with differing interests, even where that appearance is unrelated to the

August 2, 1984

matters for which representation is provided by the lawyer to the other client. Haynes v. First National State Bank, 87 N.J. 163, 173, 180-84 (1981); In re Kushinsky, 53 N.J. 1, 4 (1968); Opinion 511, 111 N.J.L.J. 16 (1983). The underlying concern is that an attorney 'cannot serve two masters' and still exercise completely independent professional judgment on behalf of one client in an arms-length transaction involving the other. In re Kushinsky, supra, 53 N.J. at 4; see Perillo v. Advisory Committee on Professional Ethics, 83 N.J. 366, 375-76 (1980); In re Dolan, 76 N.J. 1, 8-10 (1978). These principles also prohibit taking an adversarial position on behalf of one client against another existing client. Gray v. Commercial Union Insurance Co., 191 N.J. Super. 590, 599-600 (App. Div. 1983); Opinion 301, 98 N.J.L.J. 209 (1975); Opinion 282, 97 N.J.L.J. 362 (1974). Again, this prohibition applies regardless of whether the matter handled on behalf of one client is completely unrelated to the subject matter of the representation provided to the other client. Ibid.

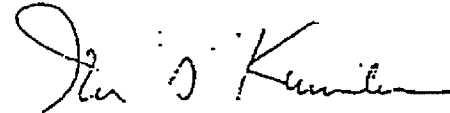
In situations not involving an irreconcilable conflict, it is normally ethically permissible for an attorney to provide such dual representation if he reasonably believes that the representation of each client will not be adversely affected and both clients consent after full disclosure. DR 5-105(C); RPC 1.7. However, the Supreme Court has held that a public agency cannot consent to dual representation because the public interest in maintaining confidence and trust in the integrity of government requires the utmost ethical circumspection on the part of the attorneys involved. In re Professional Ethics Opinion 452, 87 N.J. 45, 49-50 (1981); Ahto v. Weaver, 39 N.J. 418, 431 (1963). This prohibition against consent on the part of a public agency has been codified in the Rules of Professional Conduct recently promulgated by the Supreme Court. See RPC 1.7(a)(2) and (b)(2). As a result, the ethical bar against dual representation cannot be waived by State agencies. Accordingly, special counsel to any State agency must either decline outside employment which would entail dual representation of the kind set forth above, or terminate one of the client relationships involved. Lieberman v. Employers Insurance of Wausau, 84 N.J. 325, 340 (198); RPC 1.16(a).

You are therefore advised, for the foregoing reasons, that special counsel to your agency cannot appear on behalf of private parties before the agency or in matters in which the agency is involved as a party. In addition, special counsel cannot represent the agency in matters involving private parties which the firm concurrently represents in other matters. Furthermore, special counsel cannot take an adversarial position against the agency on behalf of any private clients.

Page 1
August 2, 1984

All special counsel to your agency should be reminded of these requirements and provided with a copy of this opinion so that they may guide their conduct accordingly.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Irwin I. Kimmelman", written over a horizontal line.

IRWIN I. KIMMELMAN
Attorney General

Distribution list attached